

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRUCE PARKER,

Plaintiff,

v.

B. TENHOV, D. MOORE,
and UNKNOWN KLINGEL,

Defendants.

CASE No. 1:22-CV-811

HON. ROBERT J. JONKER

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Kent’s Report and Recommendation (ECF No. 41) and the objections submitted by Plaintiff (ECF No. 43) and Defendants (ECF No. 42). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to

the Magistrate Judge; the Report and Recommendation itself; and the parties' objections. After its review, the Court finds the Magistrate Judge's Report and Recommendation is factually sound and legally correct.

Both sides move for summary judgment in their favor on Plaintiff's First Amendment Retaliation claims. The Magistrate Judge recommends granting Defendants' motion (ECF No. 26); denying Plaintiff's motion (ECF No. 22) and dismissing this case. While the Magistrate Judge recommends granting their motion on the merits, Defendants object to the portion of the Magistrate Judge's Report and Recommendation that finds Defendants had waived a qualified immunity defense. Defendants did invoke the qualified immunity defense though, as the Magistrate Judge observed, the Defendants' argument on the defense consisted of a single sentence. The Court discerns no need to determine whether this was enough to preserve a qualified immunity defense. Because the Court dismisses Plaintiff's claims against Defendants on their merits, the Court need not address qualified immunity. *See Wolanin v. Gibas*, No. 15-12743, 2016 WL 824624, at *6 (E.D. Mich. Jan. 27, 2016); *see also R.S.W., Inc. v. City of Keego Harbor*, 397 F.3d 427, 440 (6th Cir. 2005) ("Because the Court upholds the district court's dismissal of the equal protection claim on its merits, it need not address whether the officers were entitled to qualified immunity).

In his objections, Plaintiff contends that the Magistrate Judge's merits review got it wrong and that he is entitled to summary judgment in his favor on the retaliation claims. Here, Plaintiff primarily reiterates and expands upon arguments presented in the underlying papers. His objections fail to deal in a meaningful way with the Magistrate Judge's

analysis. The Magistrate Judge carefully and thoroughly considered the record, the parties' arguments, and the governing law. The Magistrate Judge properly analyzed Plaintiff's claims. Nothing in Plaintiff's objections changes the fundamental analysis. The Court agrees with the Magistrate Judge that Plaintiff's motion should be denied and Defendants' motion granted, for the very reasons detailed by the Magistrate Judge.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 41) is **APPROVED AND ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment (ECF No. 22) is **DENIED**.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (ECF No. 26) is **GRANTED**.

This case is **DISMISSED**.

Dated: February 21, 2024

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE